

6-1-1978

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Recommended Citation

Irwin J. Nebron & Allan Ides, *Landlord Tenant Court in Los Angeles: Restructuring the Justice System*, 11 Loy. L.A. L. Rev. 537 (1978).
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LANDLORD TENANT COURT IN LOS ANGELES: RESTRUCTURING THE JUSTICE SYSTEM

by Judge Irwin J. Nebron & Allan Ides***

[T]he general welfare and security of the Nation and the health and living standards of its people require . . . the elimination of substandard and other inadequate housing . . . , and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family.¹

The Housing Act of 1949

I. INTRODUCTION

We are reminded daily that ours is an age of inherent limitations. New York, the nation's largest city, totters on the brink of financial collapse while the natural resources upon which we depend are depleted at an ever increasing rate. A recent American Bar Association publication on urban housing courts expressed the dilemma as follows:

In this era of realization about "systems overload" and about the straining points in a world of finite personal and natural resources, it has become apparent that some of our organizations, work patterns and social structures are sadly inadequate. Much of our system responds sluggishly to change; when rights and desires expand rapidly, it is often unable to remold itself effectively.²

These perceptions have led some to plead that we lower our expectations of the world in which we live and of the social institutions which pervade our lives. In the midst of droughts, embargoes and housing shortages, they advise us that small is beautiful. While such a perspective is not without its beneficial ramifications, blind adherence to this ascetic philosophy will not solve the demanding and immediate problems of the day, nor alleviate the duty inherent in government to be responsive to

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1. Housing Act of 1949, ch. 338, § 2, 63 Stat. 413 (1949) (current version at 42 U.S.C. § 1441 (1970)).

2. ABA COMM. ON HOUSING AND URBAN DEVELOPMENT LAW, URBAN HOUSING COURTS AND LANDLORD-TENANT JUSTICE: NATIONAL MODELS AND EXPERIENCE 4 (1977) [hereinafter cited as ABA REPORT].

those problems. Rather, what is called for is a sensible remolding of those social structures deemed inadequate to meet the present needs of society.

The nationwide congestion of the courts presents an example of a system well beyond the overload point.³ The past several years have been characterized by an increasing public awareness of the legal arsenal of rights and remedies. As a result, the judicial system has found itself deluged with an unprecedented number of litigants, each demanding his or her day in court:

There is a litigation logjam in the 20,000 trial courts of the United States that poses a critical problem to the American judicial process. . . . [T]he life of a typical civil jury case often spans 3 years or more from filing to trial.

. . . [C]ourts in every State are . . . glutted by volume, . . . hampered by archaic facilities and procedure and . . . incapable of fulfilling the "swift and certain" promise of the justice system.⁴

For the average citizen, the cost of taking a case to trial, measured in terms of time, emotional stress and hard cash, can be devastating.

At the same time, elected representatives have responded to a taxpayers' mandate for fiscal restraint by drawing the strings of the judicial purse tightly closed.⁵ Gone is the era of budgets expanding to meet the exigencies of the moment. Yet, as Chief Justice Burger obliquely suggested, these "vexing problems of delay, congestion, and excessive expense . . . in the resolution of disputes" must be alleviated if the judicial system is to remain a viable force in our country today.⁶ Hence, the judiciary, faced with a litigation-conscious public, a limited budget and a plethora of antiquated procedures, must find effective methods of dispute resolution within the confines of existing structures.⁷

Over the past year, the Municipal Court, Los Angeles Judicial Dis-

3. See generally NEWSWEEK, January 10, 1977, at 42.

4. Simmons, *Toward Modernizing the Justice System*, 141 Cal. Rptr. (No. 9) 43, 44 (1977) (advance sheets).

5. See Burger, *1977 Report to the American Bar Association*, 63 A.B.A.J. 504 (1977): [T]he Congress had taken no action on the obvious need for 65 additional judgeships badly needed for five years. All this time the growth of new filings has continued, and it is now imperative that we have, not 65 new judgeships, but approximately 132—107 district judgeships and 25 circuit judgeships. I am hopeful now, *with the election behind us*, there will be no further delay in the creation of these desperately needed judgeships.

Id. at 506 (emphasis added).

6. *Id.* at 504.

7. See Clark, *A Commentary on Congestion in the Federal Courts*, 8 ST. MARY'S L.J. 407 (1976) (mere appointment of more judges not the proper solution to court congestion).

trict,⁸ (hereinafter referred to as the Municipal Court) has explored and initiated several innovations in the administration of justice as part of a concerted effort to modernize the court system by adapting it to the community which it serves. The goal has been to accelerate the decisional process toward just resolutions of disputes by streamlining existing procedures while at the same time expanding the scope of judicial services to meet the needs of an immense, heterogeneous community. Of course, the entire program has necessarily been tempered by the restraints of the current budget. Not surprisingly, the emphasis has been on creativity rather than on spending. The Landlord Tenant Court, which began operation on June 22, 1977, is one such innovation.

II. BACKGROUND

The Landlord Tenant Court, located in the downtown Municipal Courts Building, is a specialized tribunal within the Municipal Court. Most of the cases brought before the court involve disputes arising in the surrounding inner-city community.⁹ However, the impetus behind the creation of the court came as a result of several interrelated factors with major countywide significance, such as the limited availability of adequate housing in Los Angeles County, the often uninhabitable condition of rental units, the limited efficiency of the judicial response to landlord tenant litigation, and the growing complexity of landlord tenant law. Additionally, Los Angeles County had not fully recovered from the throes of the recession with an unemployment rate above the national average.¹⁰

The success of the downtown experiment has made inevitable further expansion of this specialized court concept to outlying judicial districts in

8. Municipal courts are part of the judicial system of the state of California. CAL. CONST. art. 6, § 1 (West Supp. 1978) provides: "The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts." The Municipal Court, Los Angeles Judicial District, was established by the Board of Supervisors for the County of Los Angeles pursuant to CAL. GOV'T CODE § 71040 (West 1976) as one of twenty-five judicial districts within Los Angeles County. See CALIFORNIA LEGAL DIRECTORY 259-63 (1976) for a listing of the twenty-five judicial districts. See also CAL. GOV'T CODE § 71045 (West 1976), which provides that "[t]he board of supervisors shall select a name [for the municipal court] which as nearly as possible identifies the communities embraced in the district."

9. CAL. CIV. PROC. CODE § 392(2) (West Supp. 1978) provides in relevant part:

If there is a municipal or justice court, having jurisdiction of the subject matter of the action, established in the city and county or judicial district in which the real property which is the subject of the action, or some part thereof, is situated, such court is the proper court for the trial of such action.

See also note 8 *supra*.

10. See Los Angeles Times, Nov. 6, 1976, part I, at 1, col. 5 (Los Angeles County jobless rate 9% as compared to nationwide average of 7.9%).

the county. Importantly, the purpose of the court goes beyond a mere ad hoc resolution of the disputes between individual litigants. At the heart of this project is an awareness of the judiciary's place in the complex fabric of urban life, coupled with a desire to bring the courts and the populace whom they serve into closer contact.

A. *The Housing Element*

In determining whether a specialized court dealing solely with landlord and tenant problems was a practical necessity, an underlying consideration was the availability of adequate housing stock in the county. While some recent studies have not depicted Los Angeles as experiencing, to the same degree, the shortages and decay in housing which pervade some of the nation's older metropolitan areas,¹¹ further investigation indicates that the problem in Los Angeles is nonetheless acute. As of July 1, 1976, thirty-seven percent of all available housing units in Los Angeles County were listed as multiple dwellings.¹² In addition, the number of units rented countywide (including single family dwellings) totaled 1,382,796 or approximately fifty percent of all housing available for habitation.¹³ Furthermore, a study by the Los Angeles Regional Planning Commission concluded that as of 1970, "without federal subsidies, it is virtually impossible for a low or moderate income family to buy a new single family home in Los Angeles County today."¹⁴ The possibility of such a purchase has only deteriorated since that report was published,¹⁵ and with the demise of the family-owned home, Los Angeles is fast becoming a city of renters. The countywide vacancy rate of 4.68 percent,¹⁶ in some areas as low as 1.64 percent,¹⁷ is one incident

11. See J. Cook, Working Paper for Housing Court (No. 2) 1-3 (1976) (unpublished project prepared for the Board of Supervisors, County of Los Angeles).

12. LOS ANGELES COUNTY DEP'T OF REGIONAL PLANNING, Q. BULL. No. 133, at 1 (1976). See also chart, Los Angeles County Housing Inventory. *Id.* The definition of multiple dwelling does not include duplexes. *Id.*

13. *Id.* (total housing units: 2,721,716); SOUTHERN CALIFORNIA ASS'N OF GOVERNMENTS, REGIONAL HOUSING ALLOCATION MODEL 2B (1977) (total number of renters) [hereinafter cited as SCAG].

14. LOS ANGELES COUNTY DEP'T OF REGIONAL PLANNING, LOS ANGELES COUNTY PRELIMINARY HOUSING ELEMENT 89 (1971).

15. The 1970 finding was based partly on the fact that new single family residences cost an average of \$35,000. LOS ANGELES COUNTY DEP'T OF REGIONAL PLANNING, SHELTER 5 (1971). Recent surveys indicate the price of a single family residence has continued to climb. See, e.g., Los Angeles Times, Nov. 1, 1977, part I, at 3, col. 5 (price in 1976 at \$51,000).

16. Records of the Los Angeles County Dep't of Regional Planning, Population Services Div. (Dec. 1977).

17. *Id.*

of the increased demand for rental units. These factors, coupled with a finding by the Southern California Association of Governments that eighteen percent of the rental housing in Los Angeles is in a dilapidated or deteriorating condition,¹⁸ indicate the growing relevance of landlord tenant law within the community. Importantly, as the United States Supreme Court has recognized,

[m]iserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.¹⁹

B. The Changing Law

Another factor which played a significant role in the process of deciding whether to institute a court which would deal solely with landlord tenant disputes was a recognition of the growing complexity of landlord tenant law and the concomitant need for a coherent approach to this relatively new substantive area. At common law, landlord tenant law embodied a compendium of rigid but easily applied rules. The lease of a house or parcel of land was seen as the transfer of an estate wherein the rule of caveat emptor prevailed: "The general doctrine is that on the demise of a house or lands, there is no covenant or warranty implied that the premises shall be tenantable, fit, or suitable for the use for which the lessee requires them, whether for habitation, occupation or business, or cultivation."²⁰ Furthermore, any covenants made by the lessor and lessee were "independent," that is, the breach of one covenant (*e.g.*, the landlord's covenant of quiet enjoyment) did not necessarily excuse the performance of a reciprocal covenant (*e.g.*, the tenant's covenant to pay rent).²¹ Hence, at common law, an unlawful detainer was a rather straightforward remedy—if the tenant had failed to pay rent, the landlord was entitled to immediate possession regardless of the landlord's own behavior.

An increasing number of courts have recognized that the historical antecedents of the common law rules are largely inapplicable to contem-

18. SCAG, *supra* note 14, at 2B.

19. *Berman v. Parker*, 348 U.S. 26, 32-33 (1954).

20. 49 AM. JUR. 2D *Landlord and Tenant* § 768, at 705 (1970).

21. *Id.* § 334, at 350.

porary urban realities.²² In *Green v. Superior Court*,²³ the California Supreme Court followed the modern approach and held that an implied warranty of habitability accompanies every lease of an urban dwelling.²⁴ The court held that the landlord's breach of the warranty went directly to the issue of possession and hence abrogated the tenant's duty to pay rent and could be used by the tenant as a defense to an unlawful detainer action.²⁵ In addition, the California legislature has enacted a number of statutes which have changed significantly the nature of the landlord tenant relationship, imposing new duties upon the landlord as well as creating several statutory causes of action.²⁶ As matters stood prior to the implementation of the Landlord Tenant Court, litigants were receiving varied interpretations of these new and complex rules of law from judges steeped in common law tradition, whose duties included the entire gamut of civil matters and who were thus without the opportunity to develop the necessary expertise in this rapidly changing, technical area of law.

22. See, e.g., *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1074 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970):

The assumption of landlord-tenant law . . . that a lease primarily conveyed to the tenant an interest in land may have been reasonable in a rural agrarian society In [that context] . . . , the value of the lease to the tenant is the land itself. But in the case of the modern apartment dweller, the value of the lease is that it gives him a place to live.

23. 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974).

24. *Id.* at 622-29, 517 P.2d at 1171-76, 111 Cal. Rptr. at 707-12. See generally Moskowitz, *The Implied Warranty of Habitability: A New Doctrine Raising New Issues*, 62 CALIF. L. REV. 1444 (1974).

25. 10 Cal. 3d at 631-37, 517 P.2d at 1178-82, 111 Cal. Rptr. at 714-18.

26. See generally CAL. CIV. CODE §§ 1940-1954 (West 1954 & Supp. 1978). One tenant remedy comes under the rubric of "rent and deduct" and provides:

(a) If within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the cost of such repairs does not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions. This remedy shall not be available to the lessee more than once in any 12-month period.

(b) For the purposes of this section, if a lessee acts to repair and deduct after the 30th day following notice, he is presumed to have acted after a reasonable time. The presumption established by this subdivision is a presumption affecting the burden of producing evidence.

Id. § 1942 (West Supp. 1978). Another recently enacted tenant remedy, designed to combat retaliatory evictions, provides in relevant part:

(a) If the lessor has as his dominant purpose retaliation against the lessee because of the exercise by the lessee of his rights under this chapter or because of his complaint to an appropriate governmental agency as to tenability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services, within 60 days:

(1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942; or

(2) After the date upon which the lessee, in good faith, has filed a written complaint, with an appropriate governmental agency, of which the lessor has notice,

C. Effect on the Court

The reverberations from these factors could not help but have an effect upon the judicial system. "[I]t seems reasonable to expect a positive relationship between the volume of an activity . . . and the number of cases arising out of that activity."²⁷ A report issued in mid-1977 by the Clerk for the Metropolitan Office of the Municipal Court verifies the above assertion.²⁸ Among other things, the report revealed the "high frequency of landlord/tenant conflicts within the [metropolitan] judicial district": over one third of the civil filings in 1976 were unlawful detainers,²⁹ *i.e.*, actions in which a landlord is attempting to secure immediate possession from a recalcitrant tenant.³⁰ This figure does *not*

for the purpose of obtaining correction of a condition relating to tenantability; or

(3) After the date of an inspection or issuance of a citation, resulting from a written complaint described in paragraph (2) of which the lessor did not have notice; or

(4) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.

In each instance, the 60-day period shall run from the latest applicable date referred to in paragraphs (1) to (4), inclusive.

(b) A lessee may not invoke the provisions of this section more than once in any 12-month period.

Id. § 1942.5. *See also* Schweiger v. Superior Court, 3 Cal. 3d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970) (providing a judicial remedy for retaliatory evictions).

27. Goldman, Hooper & Mahaffey, *Caseload Forecasting Models for Federal District Courts*, 5 J. LEGAL STUD. 201, 201 (1976) (quoting Casper & Posner, *A Study of the Supreme Court's Caseload*, 3 J. LEGAL STUD. 339, 346 (1974)). The latter study's thesis that the number of litigated disputes has an inverse relationship with the certainty of the law, *id.* at 346-47, would seem applicable to landlord tenant litigation. *See* notes 20-26 *supra* and accompanying text; notes 28-33 *infra* and accompanying text.

28. B. Olsen, A Report on Unlawful Detainers, Municipal Court, Los Angeles Judicial District (May 9, 1977) (memorandum, Clerk of the Court) [hereinafter cited as Olsen].

29. *Id.* at 1.

30. CAL. CIV. PROC. CODE § 1161 (West Supp. 1978) sets out the unlawful detainer remedy:

A tenant of real property, for a term less than life, or the executor or administrator of his estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him; provided such expiration is of a nondefault nature however brought about without the permission of his landlord, or the successor in estate of his landlord, if any there be; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant or employer and employee or principal and agent or licensor and licensee has been lawfully terminated or the time fixed for such occupancy by the agreement between the parties has expired; but nothing in this subdivision contained shall be construed as preventing the removal of such occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

2. When he continues in possession, in person or by subtenant, without the permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which

include the substantial number of small claims and other civil actions between landlords and tenants involving matters other than possession. The report also disclosed that the number of unlawful detainers being filed was increasing at a substantial rate (6,607 filed in the first four months of 1976 as compared with 7,560 filed during the same period in 1977) with no peak in sight.³¹ Even more significantly, the number of unlawful detainers actually set for trial had increased by over one hundred percent during the period analyzed.³² The report concluded with a

the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him and if there is a subtenant in actual occupation of the premises, also upon such subtenant. Such notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord or successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there is a subtenant in actual occupation of the premises, also, upon such subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his unlawful detention of the premises underlet to him or held by him.

4. Any tenant, subtenant, or executor or administrator of his estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using such premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provision of this chapter.

5. When he gives written notice as provided in Section 1946 of the Civil Code of his intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver up possession at the time specified in said written notice, without the permission of his landlord, or the successor in estate of the landlord, if any there be.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

31. Olsen, *supra* note 28, at 1.

32. *Id.* at 2.

suggestion that a single bench officer be given the sole responsibility for hearing all unlawful detainer actions in order to simplify the filing and adjudication process.³³

These bare statistics do not fairly depict the strain on the Municipal Court caused by the abundance of unlawful detainers, nor do the numbers fully suggest the unfortunate state of affairs arising from the congestion in the court system. Increasingly long waits for trial settings were but one offshoot of the rising incidence of unlawful detainers. Litigants, victimized by a sputtering, overloaded system, found themselves dispersed throughout the labyrinth of the Municipal Courts Building, shuffled from division to division seeking the services of a judge. People and papers were literally being lost in the maze of corridors and confusion. Trials were being delayed and postponed. Landlords with just causes were having their complaints dismissed for failure to appear. Tenants were arriving in court only to find that defaults had already been entered against them. The situation was hardly conducive to establishing a rapport with the surrounding community.

III. POLITICAL DEVELOPMENT

Several major urban centers³⁴ have responded to their own particular housing needs by establishing specialized tribunals to handle the numerous legal problems arising in the sensitive housing area:

[T]hese tribunals all share an expanded—sometimes supreme—jurisdiction over, and a single-minded concern with, housing. They range from state trial level courts with general jurisdiction over all criminal and civil disputes involving housing matters, as in Boston, to divisions of municipal courts with only criminal jurisdiction over housing code violations, as in Pittsburgh, to administrative agencies with limited powers.³⁵

Most of these housing courts have begun operation with the benefits of investigative commissions, broad enabling legislation and budgetary support. For example, the Boston Housing Court came into existence, in part, as a result of the reports of "two special commissions created by the Massachusetts legislature during the late 1960's."³⁶ Similarly, the New

33. *Id.* at 4.

34. Housing courts have been established in Atlanta, Baltimore, Boston, Chicago, Cleveland, Denver, Detroit, Hampden County (Mass.), Milwaukee, New York, Pittsburgh, Philadelphia, Syracuse, and Toledo. See ABA REPORT, *supra* note 2, at 6, 12, 21 for profiles of housing courts in Boston, Pittsburgh and New York.

35. *Id.* at 4.

36. Garrity, *The Boston Housing Court: An Encouraging Response to Complex Issues*, in ABA REPORT, *supra* note 2, at 6.

York Housing Court, an adjunct of the Civil Court of the City of New York, was created by legislation which was accompanied by extensive findings.³⁷

The idea of creating a housing court in Los Angeles has been circulating for several years. Numerous proposals have been developed by both private interest groups and public agencies. In 1974, Lawyers for Housing, a group jointly sponsored by the Los Angeles County Bar Association and the American Bar Association, urged the Municipal Court to investigate the possibility of establishing a housing court with expansive jurisdiction over all housing matters.³⁸ The group cited factors such as those discussed earlier³⁹ as compelling the creation of such a court.⁴⁰ In

37. 1972 N.Y. LAWS ch. 982, § (a) provides these prefatory comments:

The [New York] legislature finds that the effective enforcement of state and local laws for the establishment and maintenance of proper housing standards is essential to the health, safety, welfare and reasonable comfort of the citizens of the state. . . . [and that] effective enforcement in the city of New York has been hindered by the dispersion of prosecutions, actions and proceedings to compel compliance with housing standards among a number of criminal and civil courts, so that no single court has been able to deal consistently with all of the factual and legal problems presented by the continuing existence of housing violations in any one building.

See N.Y. CITY CIV. CT. ACT § 110 (McKinney Supp. 1977-78). See also Comment, *The New York City Housing Part: New Remedy For An Old Dilemma*, 3 FORDHAM URB. L.J. 267 (1975).

38. Memorandum from Don Bryant, Staff Attorney, Lawyers for Housing, to Presiding Judge Joan Dempsey Klein, Municipal Court, Los Angeles Judicial District (Sept. 27, 1974).

39. The group expressed its rationale for proposing a housing court in part as follows:

At present the problem of allegedly substandard housing comes before the courts in several contexts including unlawful detainers, condemnation actions, and suits for money damages. This litigation may become more complex and frequent. After *Green v. Superior Court*, the summary nature of unlawful detainer actions involving alleged breaches of the implied warranty of habitability will be diminished. Due to its code enforcement activities, the City is and will continue to be in court when property owners are unwilling or unable to make the allegedly necessary repairs and a condemnation order is sought. Litigation by homebuyers may become more prevalent after *Saxe v. Pollard*, which implies warranties of habitability and fitness in the sale of newly constructed homes.

It can be expected that the amount of the foregoing litigation will increase, as housing in Los Angeles ages, and to the extent that the current economic situation persists. These factors, and future legislation and developments, may cause additional litigation in new contexts or new problems needing judicial resolutions.

Id. at 2.

40. As to why a housing court would be the proper vehicle for dealing with the housing problems in Los Angeles, the group stated:

Several factors suggest that present and future litigation such as the foregoing be handled in a housing court. Judges sitting regularly in a housing court could quickly become familiar with a new body of law, the numerous complex state and local housing codes. They would also be able to develop and apply uniform policies and procedures concerning both pre- and post-trial matters (i.e. discovery, deposit of rent in an escrow, and supervision of repairs) and resolving the merits of litigation (i.e. standards for evaluating the severity of violations, necessary corrective action, and the amount of rent abatement). Both may result in significantly increased administrative efficiency. Consistent exposure to the problem of substandard housing may also lead to a heightened [*sic*] judicial awareness of and response to the social and economic

1975, based on similar considerations, a bill was introduced in the State Senate with the express purpose of setting up a low cost forum in Los Angeles to hear legal disputes between landlords and tenants.⁴¹ However, implementation of either of the above projects would have required substantial funds from the public treasury as well as extensive reversion of the present judicial system, which includes the Superior Courts.⁴² The Municipal Court lacked the necessary power to embark upon such a course, while the legislature has yet to approve any housing court legislation. Due to this lack of a concerted response, the problems suggested earlier seemed to be multiplying at a rapidly increasing rate.⁴³ The result was that as of mid-1977 Los Angeles was without a special tribunal to oversee increasingly frequent landlord tenant disputes.

While it lacks the legislative power to launch a full-scale assault upon the pervasive housing problems of Los Angeles County, the Municipal Court does have the power, within the contours of its own jurisdiction, to respond administratively to such a pressing situation. Importantly, with regard to landlord tenant litigation, the jurisdiction of the Municipal Court is wide ranging.⁴⁴ In the area of unlawful detainer, the Municipal Court has jurisdiction "where the rental value is six hundred dollars (\$600) or less per month and the whole amount of damages claimed is five thousand dollars (\$5000) or less."⁴⁵ Since the bulk of unlawful detainer actions fall into the above category and since the "litigation logjam" in the Superior Court is even more severe than that in the Municipal Court,⁴⁶ it is not surprising that a substantial number of unlawful detainers are filed in the Municipal Court. In addition, the Municipal Court has administrative responsibility with regard to the Small Claims Court, which is empowered to hear all cases "[f]or recovery of money only where the amount of the demand does not exceed seven hundred fifty dollars (\$750)."⁴⁷ A fair portion of those cases

aspects of the problem, such as an owner's lack of funds to promptly make necessary repairs. With this expertise and a sufficiently broad range of powers (i.e. in rem jurisdiction over the property in question), a housing court may be able to expeditiously handle litigation with a view towards curing substandard conditions.

Id. at 3.

41. S.B. 795, Cal. Legis., 1975-76 Reg. Sess.

42. See CAL. CONST. art. 6, § 1 (West Supp. 1978).

43. See text accompanying notes 27-33 *supra*.

44. See CAL. CIV. PROC. CODE § 86 (West Supp. 1978).

45. *Id.* § 86(a)(4).

46. The lapse of time between the filing of an unlawful detainer and trial setting in superior court is six months. Telephone conversation with Clerk of the Master Calendar, Superior Court, Los Angeles Judicial District (Jan. 9, 1978).

47. CAL. CIV. PROC. CODE § 116.2(a) (West Supp. 1978).

involve landlord tenant disputes.⁴⁸ Thus, since the focal point of landlord tenant disputes seemed to be the Municipal Court, the burden fell upon that body to mold its own processes to the immediate needs of the community. For many, this activist posture may seem unbefitting the classic concept of the scholarly, aloof judiciary. However, again in the words of Chief Justice Burger, "[w]e have . . . reached the point where there is no significant acceptance of the notion that in some strange way efficient modern methods of administration are incompatible with the purity of the ideals and the objectives of justice."⁴⁹

IV. DESIGNING THE COURT

Sensitive to the fact that the public often views the judiciary as apart from the realities of everyday life and recognizing that the judiciary is in many ways ill-equipped to deal with the essentially legislative task of rectifying the housing problems of Los Angeles, the administration of the Municipal Court placed great emphasis upon communication with various sectors of the community prior to the final unveiling of the Landlord Tenant Court. Representatives of the Legal Aid Foundation of Los Angeles, the Apartment Owners' Association of Los Angeles, the Los Angeles City Attorney's Office, the County Administrator's Office, the County Department of Consumer Affairs, Teamsters Joint Council Number 42, and the Los Angeles County Bar Association, among others, all contributed their time, expertise and varied points of view in the developmental stage of the Landlord Tenant Court. In addition, members of the Los Angeles County Board of Supervisors had, for some time, been investigating the housing court concept.⁵⁰ Their research findings added further dimensions to the project, and the elective capacity of the Board members provided a much needed conduit to the public at large.

The tentative decision to institute some type of a housing tribunal within the preexisting jurisdictional and budgetary structure of the Municipal Court system came effortlessly, almost inevitably. All parties involved in the discussions preceding implementation of the Landlord Tenant Court agreed that a judicial response to increased housing litigation was in order. The more difficult questions to resolve pertained to the precise nature of the response. Should the court have expansive power to hear all housing matters within the purview of the Municipal Court

48. See Conner, *Night Small Claims Court: "The People's Court" Reaches Out to the People*, 10 U.W.L.A.L. REV. 1, 18-19, 33 (1978).

49. Burger, *1977 Report to the American Bar Association*, 63 A.B.A.J. 504, 504-05 (1977).

50. See J. Cook, *Working Papers for Housing Court* (1976) (unpublished project prepared for the Board of Supervisors, County of Los Angeles).

system or should the function of the court be limited to unlawful detainer, the most frequent type of housing action? Should the court be a single division that sits daily or should one day be set aside and specific divisions be designated to hear all of the housing matters? Should one judge be assigned permanently to the court or should the duties be filled on a rotating basis? The task of answering these types of questions was accomplished, in part, by examining the experiences other communities had encountered with the housing court concept. Yet, in the final analysis, the particular needs of Los Angeles County remained the paramount consideration.

A. *The Ambit of the Court's Authority*

The most obvious, and at the same time the most critical, question to be resolved by the architects of any court involves the scope of that court's authority. That single decision will largely determine the overall impact of the court on the community. Many other decisions as to the court, such as staff requirements, for example, will be dictated by the scope of authority granted the court. Furthermore, if the powers invested in it are too broad, the tribunal may become an unwieldy giant and bog down of its own weight; if the ambit is too narrow, the practical usefulness of the court will be minimal. With regard to the proposed housing court for Los Angeles, a wide, but not unlimited, range of possible choices presented itself. Other communities provided helpful models.

The housing court established in Hampden County, Massachusetts presented an example of a court with an all-encompassing jurisdiction over housing matters and extensive powers to deal with the litigation which comes before it. Unique in the breadth of its jurisdiction and powers, "[t]here is virtually no housing problem it cannot deal with, from minor small claims to complex cases involving deaths and large damage suits involving several parties."⁵¹ Included within the ambit of the court's jurisdiction are "violations of the sanitation and building codes, . . . actions for possession, zoning problems, cases involving housing-related consumer protection statutes, personal injury cases involving tenants and their guests, and federal and state anti-discrimination cases in the sale or lease of housing."⁵² An integral adjunct of the Hampden County Housing Court is the corps of housing specialists aligned with the court, who function as both probation officers for code

51. Greaney, *County Housing Court deals with full range of housing problems in big-city, suburban, and rural housing*, 8 J. OF HOUSING 402, 402 (1975) [hereinafter cited as Greaney].

52. J. Cook, Working Paper for Housing Court (No. 1) 14-15 (1976) (unpublished project prepared for the Board of Supervisors, County of Los Angeles).

violators and as a source of housing information for consumers.⁵³ In short, the operations of the Hampden County Housing Court represent a multi-faceted, frontal attack upon the entire spectrum of housing problems which arise within that court's geographic purview.

Even though the Hampden County court presented an enviable example of a successful, functioning housing court, its pervasive scope exceeded the realm of possible solutions which the Los Angeles Municipal Court could realistically consider. For example, creation of a well trained staff of housing specialists could not be accomplished by judicial fiat. In addition, the all inclusive jurisdictional scope of the Hampden County court ranged well beyond the limited jurisdiction of the Municipal Court system in general.⁵⁴

However, the Municipal Court does preside over civil and criminal matters;⁵⁵ therefore, the possibility of designing a housing court which would hear housing code violations and other housing related misdemeanors as well as landlord tenant disputes presented a feasible alternative with certain attractive possibilities. The bench officer presiding over such a court would rapidly develop an expertise, not only in the complex legal issues surrounding housing, but in the everyday practical questions, such as cost of repairs, which often arise both in the prosecution of code violations and in landlord tenant disputes. From the litigants' point of view, a judge's sensitivity to these less glamorous issues may be of greater significance than the judge's ability to expound upon the common laws roots of the unlawful detainer action. Next, in the area of code violations, the judge would soon recognize those parties with a penchant for code violations and would be in a position to give such persons the credibility they have merited and the respective fines they deserve. The habitual code violator, aware that he or she will no longer remain

53. See Greaney, *supra* note 51, at 404.

54. Although their jurisdiction is wide ranging in the area of unlawful detainers, the municipal courts are not courts of general jurisdiction. Compare CAL. CONST. art. 6, § 4 (West Supp. 1978) (construed as granting general jurisdiction to superior courts) with *id.* art. 6, § 5 and CAL. CIV. PROC. CODE § 86 (West Supp. 1978) (limiting the jurisdiction of municipal courts).

55. CAL. PENAL CODE § 1462 (West Supp. 1978) provides:

Each municipal and justice court shall have jurisdiction in all criminal cases amounting to misdemeanor, where the offense charged was committed within the county in which such municipal or justice courts is established except those of which the juvenile court is given jurisdiction and those of which other courts are given exclusive jurisdiction.

Each municipal and justice court shall have exclusive jurisdiction in all cases involving the violation of ordinances of cities or towns situated within the district in which such court is established.

See LOS ANGELES, CAL., MUNICIPAL CODE, ch. 9, art. 1, div. 49, § 91.4935 (1976), which provides that a violation of the building regulations shall be a misdemeanor.

anonymous in the maze of civil divisions, may be more willing to remedy the code violations at issue.

Notwithstanding these considerations, there remained a degree of reticence to adopt even the limited (by Hampden County standards) jurisdictional model discussed above. First, implementation of that model would require a significant reorganization of the Municipal Court.⁵⁶ While such a reorganization was not beyond the capabilities of the court, to proceed to restructure completely the existing system without first having the opportunity to assess a pilot project on a manageable level was obviously not a sensible approach. A more reasonable approach would allow for an interim period during which the operations of a working model could be observed and, through an evolutionary process, additional appendages could be grafted onto the preexisting structure. Second, since one of the primary concerns of the Municipal Court centered in general upon the problematic substantive area of landlord tenant law and in particular upon the overabundance of unlawful detainers being filed,⁵⁷ it seemed unwise to jeopardize the possible success of an initially modest landlord tenant court by imposing the unnecessary burden of criminal jurisdiction over code violations. Hence, the decision was made that, at least at the outset, the jurisdiction of the court would be limited to unlawful detainers.

B. Other Considerations

Such decisions as those regarding the allocation of physical resources and the scope of the judge's responsibilities were, as mentioned above, derivative of the jurisdiction decision and, naturally, were made with a view toward furthering the project's objectives. Again, uppermost in the minds of the designers of the Landlord Tenant Court was a commitment to respond effectively to the rapidly changing, technical area of landlord tenant law and to ease the pressure on the judicial system caused by the increasing incidence of unlawful detainers.⁵⁸

1. Physical Resources

The Municipal Court could either designate one division, sitting daily, to hear all landlord tenant disputes or one day per week could be set aside for several divisions to preside over those matters. The first option was

56. Currently, the Municipal Court has separate civil and criminal calendars. Moreover, in the downtown central area criminal matters are generally heard in the County Criminal Courts Building while civil matters are heard in the downtown Municipal Courts Building.

57. See notes 20-33 *supra* and accompanying text.

58. *Id.*

appealingly simple. If the Landlord Tenant Court were to be located in a single division, the clerk's office could automatically route all unlawful detainers to that division and completely bypass the master calendar court. With all unlawful detainers being heard in one division, those summary actions would cease to disturb the flow of other civil litigation and the scheduling efficiency desired by the clerk's office would be achieved.⁵⁹

The second option provided an alternative which would cause constant disruptions to the course of other civil litigation. On "Landlord Tenant Day," the chosen divisions would be forced to interrupt ongoing trials and other civil matters would constantly be placed on the back burners. The likelihood that landlord tenant litigation would not receive the complete attention desired would be substantially enhanced, and the duties of the clerk's office would be further complicated in attempting to work within the statutorily imposed time frames for unlawful detainers.⁶⁰ Such is precisely the type of situation the project was meant to avoid.

The alternative of designating one division as the Landlord Tenant Court proved irresistible. In fact, there was little doubt but that this choice presented the only sensible approach. In terms of practicalities, the selected division would undergo no major in-house changes and would require no additional funding. Rather than a single clerk, two clerks would be assigned to the court in order to facilitate the speedy processing of the unlawful detainers. The cost for the additional clerk would be absorbed within the current budget.

2. The Judge

The choice of whether to assign one judge to preside over the Landlord Tenant Court on a relatively permanent basis or to have landlord tenant duties assigned on a rotating basis was also determined with reference to the project's overall objectives. If the rotation method were selected, the likelihood that a judge would be able to develop the desired expertise regarding housing litigation would be drastically circumscribed. In addition, reliance upon judges who may view the landlord tenant assignment as an unpleasant burden would do nothing to enhance the project's overall chances of success. In favor of the rotation system was the fact that it would have helped insure flexibility. While a single judge may become rigid in applying the law, reliance upon a number of judges with individual perspectives would insure the opposite result. However, the

59. See Olsen, *supra* note 28, at 4.

60. CAL. CIV. PROC. CODE § 1179a (West 1972) provides that summary actions, such as unlawful detainers, must be given "precedence over all other civil actions."

possibility of developing a moderately cohesive approach to landlord tenant law would be lessened substantially and the risk of rigidity could be avoided by the careful selection of a person to fulfill the role as judge of the Landlord Tenant Court.

The appointment of a single bench officer to preside over the court had much to recommend itself. That judge would be in a position to develop the requisite expertise in housing law and factors related thereto and, through constant contact with landlord tenant litigation, would be ideally situated to play a vital role in the future evolution of the law.⁶¹ From the distinct vantage point the position would offer, the judge could also assess the overall success or failure of the Landlord Tenant Court and be able to ascertain the proper response to aspects of the project in need of attention.

Not surprisingly, the decision was to select one person to fulfill the duties as judge for the Landlord Tenant Court. However, successful performance of those duties would require a unique individual, willing to have his or her time absorbed by the specialized type of litigation and possessed of the rare ability to maintain the confidence of the rivaling factions of landlords and tenants. The position would require a sensitivity to the human needs associated with all aspects of housing litigation, from the landlord's point of view as well as from the tenant's. Indeed, while both landlord and tenant representatives recognized the value of a landlord tenant court, both also expressed nervous skepticism of the entire project, each sensing that the court would be nothing less than a lethal weapon designed for the hands of the other. Considering the fact that disfavor by either group would totally short-circuit the entire project,⁶²

61. In line with this thinking, the Landlord Tenant Court has from time to time issued opinions on cases of first impression. The purpose of these opinions is twofold: (1) to inform the public of the court's position on various issues; and (2) to participate in the judicial evolution of landlord tenant law. *See, e.g.,* *Lentz v. Dennis*, No. LA 177-904 (Los Angeles Mun. Ct. Oct. 21, 1977) (eviction because of membership in a tenants' union violates tenants' first amendment right of association).

62. CAL. CIV. PROC. CODE § 170.6 (West Supp. 1978) provides in relevant part:

(1) No judge, court commissioner, or referee of any superior, municipal or justice court of the State of California shall try any civil or criminal action or special proceeding of any kind or character nor hear any matter therein which involves a contested issue of law or fact when it shall be established as hereinafter provided that such judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney appearing in such action or proceeding.

(2) Any party to or any attorney appearing in any such action or proceeding may establish such prejudice by an oral or written motion without notice supported by affidavit or declaration under penalty of perjury or an oral statement under oath that the judge, court commissioner, or referee before whom such action or proceeding is pending or to whom it is assigned is prejudiced against any such party or attorney or the interest of such party or attorney so that such party or attorney cannot or believes that he cannot have a fair and impartial trial or hearing before such judge, court commissioner, or referee. Where the judge, court commissioner, or referee assigned

the judge would have to retain the confidence of all interested parties by a consistently Solomon-like application of the law.

After careful evaluation and lengthy discussion, Judge Norman L. Epstein was asked and agreed to assume the position as judge for the Landlord Tenant Court.

V. THE LANDLORD TENANT COURT

With the essential characteristics of the Landlord Tenant Court firmly delineated and the interested parties ready to proceed with the project, all that remained was to make the public aware of the new court and its functions. While not one of the typical accouterments of a judicial system, a knowledge of the art of public relations is a useful tool in developing a working relationship between the judiciary and the public. In the case of the Landlord Tenant Court, public awareness of the project was essential. Since most unlawful detainers and landlord tenant disputes are litigated without the aid of attorneys,⁶³ the public had to be informed

to or who is scheduled to try the cause or hear the matter is known at least 10 days before the date set for trial or hearing, the motion shall be made at least five days before that date. If directed to the trial of a cause where there is a master calendar, the motion shall be made to the judge supervising the master calendar not later than the time the cause is assigned for trial. In no event shall any judge, court commissioner, or referee entertain such motion if it be made after the drawing of the name of the first juror, or if there be no jury, after the making of an opening statement by counsel for plaintiff, or if there be no such statement, then after swearing in the first witness or the giving of any evidence or after trial of the cause has otherwise commenced. If the motion is directed to a hearing (other than the trial of a cause), the motion must be made not later than the commencement of the hearing. In the case of trials or hearings not herein specifically provided for, the procedure herein specified shall be followed as nearly as may be. The fact that a judge, court commissioner, or referee has presided at or acted in connection with a pretrial conference or other hearing, proceeding or motion prior to trial and not involving a determination of contested fact issues relating to the merits shall not preclude the later making of the motion provided for herein at the time and in the manner hereinbefore provided.

(3) If such motion is duly presented and such affidavit or declaration under penalty of perjury is duly filed or such oral statement under oath is duly made, thereupon and without any further act or proof, the judge supervising the master calendar, if any, shall assign some other judge, court commissioner, or referee to try the cause or hear the matter. In other cases, the trial of the cause or the hearing of the matter shall be assigned or transferred to another judge, court commissioner, or referee of the court in which the trial or matter is pending or, if there is no other judge, court commissioner, or referee of the court in which the trial or matter is pending, the Chairman of the Judicial Council shall assign some other judge, court commissioner, or referee to try such cause or hear such matter as promptly as possible. Under no circumstances shall a party or attorney be permitted to make more than one such motion in any one action or special proceeding pursuant to this section; and in actions or special proceedings where there may be more than one plaintiff or similar party or more than one defendant or similar party appearing in the action or special proceeding, only one motion for each side may be made in any one action or special proceeding.

63. A survey by the Clerk of the Court in October of 1977 indicated that in approximately 50% of the cases tried before the Landlord Tenant Court, neither side is represented by an attorney. Clerk of the Court, Landlord Tenant Court Survey (Oct. 1977) [hereinafter cited as Clerk's Survey].

that a special court had been created to settle their grievances. A press conference, held on June 20, 1977 and attended by representatives of the groups which had participated in the formation of the court, provided the vehicle through which the media disseminated the necessary information to the public, and on June 22, 1977 the Landlord Tenant Court officially began operations.

A. *The Initial Reaction*

As Judge Epstein took the bench in Division 14 of the Municipal Court, the Landlord Tenant Court became a reality. However, the first few days of the court's existence did not go as smoothly as one may have expected in light of the broad base of support evidenced during the court's planning stages. Instead, the earlier days were marked by the anxious expectation that the halls of justice would soon come thundering down. The initial, seemingly moderate decisions rendered by the court sent powerful waves of dissent rolling through the representatives of the landlord interests. That group immediately envisioned the cruel axe of a pro-tenant bias descending swiftly upon their vulnerable necks. Likewise, the tenant-oriented faction feared that the Landlord Tenant Court had assumed the posture of a judicially sanctioned rent collection agency.

The fact that both sides reacted with negative fervor indicated the probability that favoritism was being extended to neither. Even so, the negative reactions bespoke a dearth of confidence in the court. Without public confidence, the entire project would come to an abrupt and ignoble demise; that possibility bore heavily upon the backers of the Landlord Tenant Court. Further, ominous rumblings that disgruntled attorneys, en masse, would soon begin filing affidavits of prejudice⁶⁴ underscored the urgent need to establish a rapport with the concerned parties.

No one considered taking the quick and easy way out by waving a white flag of defeat; and rather than ignoring the discontent, the sitting judge formed an advisory committee to investigate possible solutions to the problem. Representatives of all factions were invited to sit on the committee and were given an opportunity to vent their feelings. The mere fact that the court was willing to listen dissipated much of the insecurity; the clearly expressed intention of the court to provide a fair and effective forum for all litigants soon became apparent and allayed the immediate fears of those relying on the court for judicial services.

64. See note 62 *supra*.

Of course, even to date landlord and tenant interests are cautiously skeptical of every move the court makes. However, they both recognize that no decision will be made without due regard for the legitimate interests of all viewpoints. Not only did the advisory committee play an invaluable role in easing the birth pains of the infant project, but the committee has become a permanent adjunct of the Landlord Tenant Court, meeting regularly to suggest new directions and to implement new programs. Since the advisory committee was formed, not a single affidavit of prejudice has been filed against the Landlord Tenant Court.

B. The Court's Operations

1. Logistics

During the first six months of the Landlord Tenant Court's operation (through December 31, 1977) nearly 16,000 unlawful detainers were filed in the metropolitan branch of the Los Angeles Judicial District.⁶⁵ Over eighty percent of these actions resulted in default judgments against defendants (tenants) who failed to answer the complaints against them.⁶⁶ However, with the recent availability of a general denial answer,⁶⁷ the percentage of defendants failing to answer has begun to decline, and since July 1, 1977, 2,477 unlawful detainers have actually been set for trial in the Landlord Tenant Court.⁶⁸ In addition to the unlawful detainers, the court has been given authority to hear landlord tenant disputes involving matters other than possession which fit within the jurisdictional framework of the Municipal Court.⁶⁹

The court meets daily, with both a morning and an afternoon session. Typically, between eighteen and twenty cases are set for trial each day; most are disposed of on that day, with only a few being taken off calendar, usually at the request of the parties to the suit. Despite the developing complexity of landlord tenant law, most unlawful detainers remain quite simple: has the tenant paid the rent? does the landlord have a right to possession? Of course, even those cases in which an answering

65. Records of the Municipal Court, Los Angeles Judicial District (1977).

66. *Id.*

67. CAL. CIV. PROC. CODE § 431.40 (West Supp. 1978) provides for the use of a general denial in any action in which the amount in "controversy does not exceed seven hundred fifty dollars (\$750)." Subsection (c) provides that a general denial form be available at the place of filing. See CAL. R. CT. 982 (prescribing a form for the general denial).

68. Records of the Municipal Court, Los Angeles Judicial District (1977).

69. CAL. CIV. PROC. CODE § 86(a)(1) (West Supp. 1978) grants to the municipal courts original jurisdiction "[i]n all cases at law in which the demand . . . amounts to five thousand dollars (\$5000) or less."

defendant fails to appear in court require some litigation. At a minimum, the court must be satisfied that notice was proper in all respects and that the plaintiff has a *prima facie* case against the defendant.⁷⁰ With these simpler cases, an unlawful detainer generally takes between ten and fifteen minutes to litigate. Hence, with the exception of the more complicated factual situations, the numerical bulk of the court's daily calendar is often completed during the morning session.

The afternoon session of the Landlord Tenant Court is "reserved" for cases which may require greater amounts of time or which had previously been taken off calendar. Occasionally, longer trials will be held over several days, with only the afternoon time period used for that purpose. In this way, the court need not set aside all other business in order to facilitate the requirements of a complicated case. At times, cases requiring lengthy trials must be transferred to other divisions in the Municipal Court in the interest of affording the litigants a speedy and attentive adjudication of their dispute and of avoiding a complete stoppage of the consideration of other pressing landlord tenant matters before the court. For example, in the rare situation where a jury trial is requested,⁷¹ of necessity the case is transferred out. The transferee division is usually presided over by a judge who has been closely aligned with the landlord tenant project.

2. Judicial Attitude

Midway through the court's initial six months of operations, a survey conducted by the clerk's office revealed that in over fifty percent of the cases presented for trial, neither party was represented by counsel. In cases where one party was represented, that party tended to be a landlord.⁷² For many of these people, both landlords and tenants, a day in the Landlord Tenant Court is not a reflection of their everyday experiences. Not surprisingly, these amateur attorneys often display a certain level of insecurity. Moreover, since landlord tenant litigation centers on a rather sensitive topic—the home, the litigants frequently enter the court room with a Pandora's box of emotions waiting to be released. To afford the litigants in the Landlord Tenant Court a positive experience with what

70. *Id.* § 594 provides that before an issue is brought to trial, the court must be satisfied that an absent party in an unlawful detainer action has received at least ten days' notice of the trial. Furthermore, since *id.* § 1014 defines "appearance" broadly ("a defendant appears in an action when he answers . . ."), judgment will not be entered against an absent defendant who has answered unless the plaintiff can prove up a case.

71. Even though an unlawful detainer is a speedy remedy, *id.* § 1171 (West 1972) provides for a jury trial in such actions.

72. Clerk's Survey, *supra* note 63.

may be their only confrontation with the judicial process, and to make meaningful their right to a day in court, an effort was made to relax the formalities of a typical courtroom, while not casting procedure and decorum aside.

The daily court session begins with Judge Epstein's delivery of a cordial opening statement.⁷³ These opening remarks serve several beneficial functions. First, they ease the litigants' self-consciousness and tension by expressing an empathetic understanding of those feelings. Second, they briefly familiarize the neophyte litigant with court procedures and the scope of the court's powers of relief. Third, they emphasize the importance of rationally collecting one's thoughts prior to stepping before the bench. Finally, they gently urge the parties to attempt to settle their disputes before their particular case is called. No one contends that these mere words completely eliminate court room anxiety; however, the statement does tend to humanize the court and the entire legal process over which it presides. The overall message is that the judge is present to serve the needs of the litigants.

Those needs are served in part by the court's sensitivity to the difficulties a lay person may encounter in presenting a case to a judicial tribunal. The untrained litigant knows neither the jargon nor the procedures, neither when to object nor when to remain silent. For example, let us suppose that a tenant has been properly served with a notice of eviction. The attempted eviction is based upon the tenant's refusal to pay a rent increase imposed on five days' notice. In such a situation the tenant may feel unjustly treated and want someone to listen, and at the same time may have no idea that a "retaliatory eviction" is involved and that specific legal remedies have arisen.⁷⁴ Without being an advocate, the court can be attentive to such facts and thus insure that the cause before it is fairly and fully litigated. This requires a precise knowledge of the law and a sensitive ear able to pick up on the obscure, unarticulated issues which weave in and out of landlord tenant litigation. Of course, this sensitivity must be fairly applied to landlords and tenants alike. One outstanding quality of the Landlord Tenant Court is such a sensitivity.

C. *The Court Evolves*

Having met with widespread acceptance by both landlord and tenant groups,⁷⁵ the court was prepared to test its strength by expanding both the

73. See Appendix *infra* for the text of the opening statement.

74. CAL. CIV. CODE § 1942.5(a) (West Supp. 1978) defines retaliatory eviction. See note 26 *supra*.

75. Factors such as landlord and tenant participation in the expansion of the project and

scope of its authority and the breadth of judicial services available to the community. The first such extension involved the assimilation of non-possessory landlord tenant disputes within the court's purview.⁷⁶ Other more daring experiments followed.

1. Night Landlord Tenant Court

A poll of landlord tenant litigants indicated a substantial interest in having night sessions of the Landlord Tenant Court.⁷⁷ Nine out of ten persons polled (nonattorneys) stated that if given the opportunity, they would prefer to attend night sessions of the court.⁷⁸ Conversely, nine out of ten attorneys polled expressed the opinion that they would not be interested in attending a night landlord tenant court.⁷⁹ However, since a large portion of landlord tenant disputes brought before the court do not involve attorneys⁸⁰ but rather involve working people who, one may safely assume, cannot easily sacrifice a day's wages in order to attend court, a decision was made to institute a Night Landlord Tenant Court. Beginning November 3, 1977, the Night Landlord Tenant Court would sit one day per week as part of the Municipal Court's Night Justice Center.⁸¹

The Night Landlord Tenant Court was established primarily to provide persons representing themselves a convenient, alternate time frame during which to litigate landlord tenant disputes. As there existed no desire to force any person to attend night sessions of the court, the emphasis was on freedom of choice. Indeed, being compelled to attend at night could present even greater burdens for some parties than would attendance during the day. The limited availability of public transportation at night and the added costs one may incur for use of an attorney during evening hours are but two such burdens. Nor did the Municipal Court seek to alienate members of the landlord tenant bar who had expressed a desire to limit their court appearances to the daylight hours. Hence, the use of the Night Landlord Tenant Court was made purely optional and, in the area of unlawful detainer, limited to those cases in which *both* parties agree to the choice of the evening forum.

The bulk of the cases heard by the night court have been small claims actions between landlords and tenants. Due to the rule of unanimity as to

the total absence of affidavits of prejudice filed against the court suggest that the court has been accepted by the interested parties.

76. See note 69 *supra* and accompanying text.

77. Clerk's Survey, *supra* note 63.

78. *Id.*

79. *Id.*

80. *Id.*

81. See Los Angeles County Bar Ass'n Press Release (Oct. 18, 1977).

unlawful detainers, the court has not been overwhelmed by that type of action. Many landlords fear that if they agree to docket their unlawful detainers at night, otherwise disinterested tenants will be encouraged to litigate. Assuming the landlord's cause of action has merit, this fear is largely without foundation. If the tenant files a general denial to an unlawful detainer, the landlord will be compelled to litigate the merits whether or not the tenant appears.⁸² If the tenant lacks a meritorious defense, he serves no useful purpose by appearing in court, day or night. At either time, the tenant without a defense will lose and the landlord will be entitled to possession. On the other hand, since most unlawful detainers involve the question of money damages, a tenant who has or believes he or she has a viable defense is just as likely to appear during the day as at night.

In short, the Night Landlord Tenant Court adds no weapons to the tenant's arsenal of tactics; it merely provides an alternate, convenient forum for all interested parties. One attractive aspect of that forum is that parties who have opted for the night session can expect to be at trial sooner than those persons who select the day court.

2. Settlement Officers

One of the most intriguing additions to the Landlord Tenant Court is the Settlement Officer Program, which began operation in early November of 1977. The program, designed in conjunction with the Los Angeles County Bar Association, consists of attorneys volunteering their time to assist landlord tenant litigants in arriving at pretrial settlements. Over two hundred attorneys have volunteered to participate in the program. While the settlement officers generally work on cases where both parties are unrepresented by counsel, many result-oriented members of the landlord tenant bar have been pleased to use the services of these volunteer arbitrators.

Before becoming a settlement officer, the volunteer attorney goes through a short training session which consists of an overview of landlord tenant law, with emphasis on unlawful detainer, and which includes one morning's observation of the operations of the Landlord Tenant Court. Since the goal of the program is to aid the litigants in reaching a mutually acceptable basis upon which to settle, the officers are generally free to pursue any methods reasonably calculated to achieve that end. However, three ground rules set the framework of the settlement officers approach: settlement officers (1) do not become an advocate for either side, (2) do

82. See note 70 *supra* and accompanying text.

not offer predictions as to the judge's conclusions, and (3) do not force the parties to compromise.⁸³

The settlement officers handle a variable number of cases each day, depending upon the complexity of the disputes assigned. The average daily caseload is four cases.⁸⁴ During the program's first two months of operation (November and December, 1977) 135 cases went before settlement officers and of those cases, ninety-three were settled.⁸⁵ In other words, sixty-nine percent of the cases handled by the settlement officers were disposed of prior to trial.

3. Other Additions

In line with the Municipal Court's goal to develop a consistent approach to landlord tenant litigation, the advisory committee to the Landlord Tenant Court is currently compiling a bench book of policies and procedures which are followed by the court. The manual should be a useful tool in defining the state of landlord tenant law in the Los Angeles Judicial District. In the same vein, the court has issued several memorandum opinions specifically delineating the court's position on particular factual patterns.⁸⁶ The advisory committee is also investigating the possibility of designing a simplified standard form for unlawful detainer complaints.⁸⁷

In January of 1978 a clinical program was set up in conjunction with the U.C.L.A. School of Law to give indigent litigants free legal assistance. In fairness to all parties, the legal aid is only offered to those litigants facing persons already represented by counsel. While the infancy of the project precludes a precise evaluation, the law students participating in the program have displayed a desire to approach the cases with a sensible maturity which augurs well for the success of the clinic. If this early assessment bears out, in all likelihood the clinic will become a permanent adjunct of the Landlord Tenant Court.⁸⁸

VI. CONCLUSION

The Landlord Tenant Court is one example of the judiciary's willingness to adapt the judicial processes to better serve the needs of the public.

83. Interview with Sarah Noddings, Esq. in Los Angeles (Oct. 1977).

84. Records of the Landlord Tenant Court, Municipal Court, Los Angeles Judicial District (1977).

85. *Id.*

86. *See* note 61 *supra*.

87. Interview with Judge Norman L. Epstein, Municipal Court, Los Angeles Judicial District (Mar. 23, 1978).

88. *Id.*

However, the judiciary, with its limited resources, cannot succeed completely in renovating the justice system without a broad base of support from both the other branches of government and the community at large. Hopefully, such projects as the Landlord Tenant Court will put the legislative and executive branches of government on notice of the judiciary's resolve to move beyond tradition and develop efficient methods of dispute resolution. Perhaps such a realization will encourage those branches to lend their respective talents to the task at hand.⁸⁹

89. Aside from the Landlord Tenant Court, the Municipal Court has instituted a number of innovative programs designed to improve the delivery of judicial services in the community:

(1) A Night Small Claims Court and a Night Justice Center began operations in the Traffic Courts Building in 1977. Both were designed to expand judicial services to meet the particular needs of working people and both have met with widespread community approval. See Conner, *Night Small Claims Court: "The People's Court" Reaches Out to the People*, 10 U.W.L.A.L. REV. 1 (1978). On May 2, 1978, a second branch of the night small claims court began operations in the San Fernando Courts Building, in order to serve residents of one of the largest suburban areas in Los Angeles county.

(2) A Municipal Court's Committee composed of representatives of groups and agencies concerned with the criminal justice system was set up to combat the chaos which was overwhelming the court's criminal docket. In late 1976 the crisis there had reached such a critical point that the civil calendar was briefly suspended and serious consideration was given to prioritizing criminal cases, that is, determining, without regard for the merits of the cases, which should go to trial and which should be dismissed for lack of judicial personnel. This was obviously an intolerable situation, since making such determinations is antithetical to the basic purpose and function of the judiciary. A judicial officer was appointed to oversee the criminal division and to help streamline criminal calendaring. With the aid of the newly appointed judicial administrator and the Municipal Court's Committee the crisis was completely averted.

(3) A shortage of jury courtrooms was remedied by a trade with the Juvenile Division of the Superior Court. The newly acquired courtrooms were designated "Multi-Purpose Courts" and were used to absorb both felony preliminary hearings and misdemeanor jury trials. These additional jury rooms facilitated flexible response to the variable case flow, as well as easing scheduling difficulties experienced by certain government legal offices.

(4) Two special volunteer programs, the Settlement Officer Program and the Civil Pro-Tem Program, afforded private attorneys the opportunity, through pro bono work, to aid both litigants and the Municipal Court in easing the burdens of the adjudication process. See text accompanying notes 84-85 *supra*.

See generally Los Angeles Daily Journal, Dec. 12, 1977, at 1, col. 3; Metropolitan News, Dec. 9, 1977, at 1, col. 2.

APPENDIX

Opening Statement of Judge Norman L. Epstein
Before the Landlord Tenant Court

Thank you and good morning.

I am going to begin this morning, as I usually do, with some remarks particularly addressed to those of you who are representing yourself in cases coming before the court. There are a number of attorneys here who have heard these remarks before. I apologize to them for the repetition, but I think they would be the first to agree that these comments are of particular importance to those of you who are here handling your own case.

You have the right to represent yourself. That right will be respected whether you are here as a landlord or as a tenant. If you are representing yourself, I expect that this is probably not something you do every day—handling your own case before a judge in court with an opposing side and possibly an attorney on the other side. If you are in that situation, you may feel a little nervous or anxious about it. If you do feel that way, it is very understandable. Almost everyone would feel a little nervous about handling his own case in court—even lawyers or judges who are handling their own cases. So there is nothing to be self conscious about if you are a little nervous or excited.

But I am going to ask you to do something I know will not seem easy to do. That is to put this feeling behind you when your case is called, and present your case just as plainly, simply, and matter of factly as you can. I am sure that you will be better off presenting it that way.

We have all been in a situation at one time or another in which something was coming up which we were very nervous about. A job interview, an examination, an important family event. We wondered how we would ever get through it, and when it was over, we wondered how we ever stood up to it. But when we were in the middle of doing it, it did not seem quite so bad, probably because we were too busy doing it to worry about it. I think you will find that handling your own case is a little like that.

I have a few words now about the procedure we use in court. The purpose of any trial or court hearing is to determine the facts—to decide what happened and to apply the correct law to the facts. Normally when you or I try to find out something, we talk about it with other people, look at any papers involved, and sooner or later arrive at a conclusion as to what happened. That is because in these situations we are trying to find out for ourselves what happened. In a court proceeding, *you* already know what happened, but you want to convince a third, neutral party,

who knows nothing about the case. I am that party. I can only decide the case if we follow orderly procedures. Only one person may speak at a time and only one side of the case is presented at a time.

The landlord is plaintiff and he or she presents his or her case first. This is not because of any favoritism to the landlord. It is simply because the landlord is the party who started the lawsuit, and must prove the landlord's case. If the landlord does not, the tenant wins. The landlord will present his or her case by calling witnesses, perhaps himself or herself. Each witness testifies in response to questions. After the witness testifies for his or her own side, the tenant can ask questions. If you are the tenant, this is not the time for you to present your side of the case. That will come later. Instead, it is the time to ask questions of the landlord's witness, if you wish to do so. The questions you should ask are, frankly, questions which you think will bring out information that will help your case—information that you want the judge to know about.

After the landlord's witnesses have testified in answer to questions asked by the landlord and the tenant, then it is the tenant's turn to testify or call witnesses to testify. These persons are then asked questions by the landlord's side.

And so it goes: first one side and then the other.

I now want to discuss the possibility of a settlement of your case. I strongly encourage you to talk to the other side about a settlement. It has been my observation that the parties are often considerably better off discussing the case with the other side and arriving at a settlement, than they would be by going through a trial. If the case is tried, I will decide the facts and apply the law to the facts. You will end up, good or bad, win or lose, depending on where the facts and the law take you.

If you win, you probably won't be interested in talking about settlement; after all, what is there to talk about if you have won? So you will understand that if you lose, the other side will not be very interested in talking to you either. The time to discuss a settlement is before the case is tried, not after it is over.

The main issue in these cases is possession of the property—that is basically what an unlawful detainer case is all about. The landlord is trying to get the place back. But there are other issues which are also involved. If you have a written agreement, it probably has an attorney's fee provision. If it does, if you are the tenant and the landlord wins, you will have to pay the landlord's attorney fees as I set them, in addition to whatever else you may have to pay. If the tenant wins and is here with an attorney and there is an attorney fee provision, the landlord will have to pay the tenant's attorney fee as I set it. There is usually some amount of rent due, and if judgment is for the landlord it will probably include rent due. The winning side gets costs of suit; filing fees and the cost of serving papers. Finally, there is the most important issue of all, posses-

sion of the property. If the landlord wins, the landlord will get possession. I have authority to issue an order for possession today. I also have the authority to stay that order—to hold on to it for some period of time. Whether the landlord is entitled to money, and if so, how much, when, and under what conditions; whether the landlord will get possession, and if so when and under what conditions—each of these issues can be discussed with the other side. There is not one that cannot be put on a table and talked about.

In some cases the landlord is so interested in reaching an agreement about possession that he or she may be willing to give up some or even all of the money issues involved. This is not always true, but it is true some of the time. If you are the tenant you will not know if it is true in your case unless you discuss it with the landlord.

There is a rule of law which provides, generally, that statements one side makes to another in a settlement discussion cannot be presented against that side in court if the case does not settle. So you do not have to be concerned that you might make a slip of the lip in discussing a settlement with the other side which they may tell me about if the case does not settle. The lawyers here know that I will not receive that kind of evidence, and I want you to know it too—partly to try to emphasize the point I have been trying to make.

That is that you have nothing to lose by talking to the other side about a settlement, and you may have a great deal to gain. The worst that can happen is that the case won't settle. If that happens you are no worse off than you are right now. You would still be waiting for the case to be tried. Settlement discussions should be conducted in the corridor outside the courtroom, and when we get to your case, the bailiff will call you. If you need more time to discuss settlement, just tell the bailiff you need additional time. If the case still does not settle, you will not drop to the bottom of the calendar because you were not ready. We will call your case again next in order as it would have been called.

There are two ways the case can be settled: in court and out of court. An out of court settlement is simply an agreement between the parties which does not require approval by the court. The landlord typically takes the case off calendar, dismisses it or does something else so that the case cannot proceed further without the tenant getting another notice. If you reach such a settlement, I suggest that it be in writing so there is no misunderstanding later.

An in court settlement is usually by a stipulated judgment—an agreement of both parties about an order the court will issue. We have a form which you can use for this. The bailiff has the form, and you can pick up a copy of the form from the bailiff. The form should be completed and handed to the bailiff. I will review it the first chance I get, which will probably be as soon as I finish the case I am then hearing. I almost

always approve those agreements; if the parties can get together, I certainly do not want to stand in their way. The only time I do not approve these agreements is when I think there is something in them that is illegal, unclear, or technically wrong. [In the months that we have had a landlord/tenant court, there has not been a single instance in which one of those problems came up that we were not able to solve it. So if the parties can reach an agreement, I am reasonably confident that we will be able to solve any problem.]

Once the case is settled, you are free to leave, taking a copy of your agreement with you. Of course you are also free to stay and watch the rest of the cases if you wish. But your case, at least, will be concluded.

I have one final comment about settlement, and it is the most important. If you enter into a settlement discussion with the other side with the idea that whatever they may do, you are not going to settle unless you win a total victory and they surrender, there is not going to be a settlement. No one is going to agree on those terms. And they cannot expect you to agree on those terms either. Any successful settlement involves give and take on both sides. Neither side gets everything it wants. Neither side loses everything at risk. And usually neither side feels overjoyed about the result. But usually each side feels, based on a hard, realistic look at the case, that the settlement is fair, and one they can live with. And that is all the law or anyone can ask.

I am going to call the calendar now. If you are here without an attorney, please stand and give me your name when your case is called. That way, I will not only hear a voice but see you as well, and so will the other side. And you will both know who you should talk to about a settlement. If your attorney is late, please tell me when you expect the attorney to be here. I will ask the attorneys to please tell me the side they are representing, and to give me an estimate of the time for trial.